

REMARKS

Paragraphs 1 and 2 of the Office Action

Claims 1,3,4 and 8 are rejected under 35 USC §102(b) as being anticipated by
5 U.S. Patent Number 3,017,056 to Bishop.

The Examiner is respectfully directed back to applicant's previous statements regarding Bishop. In particular, the Examiner has failed to show a notch in the first place. The Examiner states "a notch (3) extending into the top end such that a lip is defined, the lip (lip is identified in fig 2, the surface extending between the notch and the
10 hook) being spaced from the top end,..." But this is not what Bishop teaches, Bishop teaches "a can holder comprising *two sections 3 which straddle the support (1)* and are connected thereto by a pivot pin 4." Column 1, lines 53-56. There is no notch but a pair of arms 3 pivotally attached to the pole 1. Applicant's claim includes a notch *extending into* the top end of the pole. There is nothing extending into the top end of the pole of
15 Bishop. The top end of the pole of Bishop is planar. There is nothing about the notch that makes it pivotal with respect to applicant's pole. Applicant's device includes no arms. The structural advantage of this arrangement is that the aerosol can abuts the pole itself so that when it is actuated, the biasing pressure is extended down the length of the pole. This is not the case with Bishop, which includes sections 3 that extend outwardly
20 away from the pole and grip a canister. It is again submitted to the Examiner that the Examiner has mischaracterized the meaning and teachings of Bishop and that Bishop lacks the elements specifically called for in applicant's claim 1. For this reason, it is believed that claims 1-9 are in condition for allowance.

Withdrawal of the rejection is respectfully requested by the applicant.

Paragraphs 3 and 4 of the Office Action

Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S.
Patent Number 3,017,056 to Bishop.

It is respectfully submitted to the Examiner that Bishop cannot disclose a range
30 because there is no lip to be begin with. That the Examiner simply states that the lip is shown in Figure 2 without giving an element number is an indication that no lip exists

and that Bishop never intended to define a lip. Since there is no lip, there can be no measurement range and therefore claim 2 is believed to be in condition for allowance.

Withdrawal of the rejection is respectfully requested by the applicant.

5 **Paragraph 5 of the Office Action**

Claims 5-7, and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Number 3,017,056 to Bishop in view of U.S. Patent Number 6,033,560 to Kisner.

10 The statements relating to Kisner are still valid, however, it is further pointed out that Kisner would not be combined with Bishop since the combination would serve no use to Bishop. Bishop includes sections 3 that extend around a can. They, in effect, take the place of the straps used in Kisner. It is respectfully submitted that the Examiner cannot state that the sections 3 form a notch for securing the canister but then include Kisner for that same purpose. Since the combination would be redundant, there can be
15 no motivation to make the combination. Without motivation, the 103 finding cannot stand.

Thus, every element of a claimed invention may often be found in the prior art. See *id.* However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention. See *id.*
20 Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. See *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); *In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

25 In re Kotzab, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000). In this case, the Examiner has purported to find every elements, however, their combination is not warranted since, as stated above, the Examiner has included redundant elements which cannot be used together and therefore would not be combined. Further, Kisner includes straps attached
30 to plates attached to the pole and not straps attached directly to the pole as claimed by the applicant. For this reason, claims 5-7 and 9 are believed to be in condition for allowance.

The applicant respectfully requests withdrawal of the rejection.

New Claims

New claims 10-19 have been added to vary the scope of the claims. In particular, the lip has been further defined in accordance to that which is taught in the specification and clearly shown in the figures. No new matter has been added. For the reasons stated
5 above and in further view of the defined limitations of the lip, it is believed that claims 10-19 are in condition for allowance.

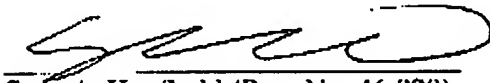
CONCLUSION

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In light of the foregoing amendments and remarks, early consideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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